(5)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No. 941/2005

APPELLANT : The Oriental Insurance Company Ltd.,
Defendant No.2 Korba, through its Divisional Manager,
Bilaspur (C.G.).

-Versus –

RESPONDENT : 1. Shri Raj Kumar,
Claimant S/o Shri Hemlal Sahu,
R/o Chuna Bhatta, Podi Bhata,
In the Nagar Palika Akaltara,
Janjgir Champa (C.G.), At present
R/o Lal Khadan, Bilaspur (C.G.).

P.R. No. 2850/04
Presented by Shri L.S. Thakur
dated 15.12.04

RESPONDENT : 2. Shri Kanhaiya Singh, 40 years,
Defendant No. 1 S/o Shri Magan Singh,
R/o Jagmahant, P.S. Janjgir,
District – Champa Janjgir (C.G.).

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988.

XI-HC-78

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A. No. 941 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13-02-2007

Shri Ali Asgar, Counsel for the appellant.

This Miscellaneous Appeal is being disposed of finally without notice to the respondents.

Heard.

The impugned award has been assailed by the learned counsel for the appellant only on the ground that the learned M.A.C.T. failed to take into consideration the fact that in the F.I.R. lodged by the father of the claimant, it was clearly stated that the tractor trolley had been taken for unloading bricks which was a clear admission showing breach of policy by the insured, it being insured only for agricultural purpose.

Reliance was placed on **Guruvachan Kaur and Others Vs. Iqbal Singh Chhawda and Others** reported in **2006 A.C.J. 649**.

Having heard learned counsel for the appellant, the arguments advanced cannot be countenanced since the appellant-insurer did not lead any evidence before the learned M.A.C.T. to show breach of policy. The oral evidence led by the claimant clearly established that the tractor trolley was being used for agricultural purpose at the time of accident. As regards the F.I.R., it is pertinent to note that the same was not lodged by the claimant but was lodged by his father. The F.I.R. did not mention that the accident had occurred during transportation of bricks but clearly ~~shows~~ states that the accident had occurred after the bricks have been emptied and the tractor trolley was returning to the village. The case law cited, being clearly distinguishable does not apply to the facts of this case. In this view of the matter, I am of the considered opinion that the learned M.A.C.T. has rightly relied on the testimony of the claimant and compensation of Rs.25,000/- awarded by the learned

P.T.O.

XI-HC-78

(37)

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	M.A.C.T. for the injuries sustained by the claimants cannot be faulted with. In the result, this appeal being devoid of merit is dismissed. No order as to costs. In view of above, I.A.No.2295/2006 for out of turn hearing stands disposed of. **Sd/-** **Dilip Raosaheb Deshmukh** **Judge**	